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WASHINGTON COUNTY

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IN THE FIFTH DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

MOTION AND MEMORANDUM TO
ARREST JUDGMENT

Case No. 061500526

Judge James L. Shumate

Defendant Warren Steed Jeffs, by and through counsel, and pursuant to Rule 23, Utah R. Crim. P., hereby moves to arrest judgment. A reasonable juror could not have concluded beyond a reasonable doubt from the State's purely circumstantial evidence that Jeffs encouraged another to rape Elissa Wall.

STANDARD OF REVIEW

Rule 23 provides:

At any time prior to the imposition of sentence, the court upon its own initiative may, or upon motion of a defendant shall, arrest judgment if the facts proved or admitted do not constitute a public offense, or the defendant is mentally ill, or there is other good cause for the arrest of judgment. Upon arresting judgment the court may, unless a judgment of acquittal of the offense charged is entered or jeopardy has attached, order a commitment until the defendant is charged anew or retried, or may enter any other order as may be just and proper under the circumstances.

Utah R. Crim. P. 23.

Judgment should be arrested unless, "viewing the evidence in the light most favorable to the prosecution, a reasonable jury could find the defendant guilty beyond a reasonable doubt." *State v. Clark*, 2001 UT 9, 13 n.2, 20 P.3d 300. This court "assume[s] that the jury believed the evidence that supports the verdict. *State v. Fedorowicz*, 2002 UT 67, ¶ 40, 52 P.3d 1194 (citing *State v. Widdison*, 2001 UT 60, ¶ 74, 28 P.3d 1278).

Although a defendant bears a "heavy burden in challenging the sufficiency of evidence," the burden is anything but insurmountable. *State v. Gonzales*, 2000 UT App 136, ¶ 40, 2 P.3d 954. Especially with regard to circumstantial evidence, "A guilty verdict is not legally valid if it is based solely on inferences that give rise to only remote or speculative possibilities of guilt." *State v. Shumway*, 2002 UT 124, ¶ 18, 63 P.3d 94 (quoting *State v. Workman*, 852 P.2d 981, 985 (Utah 1993)).

In language particularly relevant to the judgment herein, which is entirely based upon circumstantial evidence, the Utah Supreme Court has declared:

The fabric of evidence against the defendant must cover the gap between the presumption of innocence and the proof of guilt. In

fulfillment of its duty to review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict, the reviewing court will stretch the evidentiary fabric as far as it will go. *But this does not mean that the court can take a speculative leap across a remaining gap in order to sustain a verdict.* The evidence, stretched to its utmost limits, must be sufficient to prove the defendant guilty beyond a reasonable doubt.

State v. Petree, 659 P.2d 443, 444-45 (Utah 1983) (emphasis added), *overruled in part on other grounds as recognized in State v. Walker*, 743 P.3d 191 (Utah 1987).

In *Workman*, *supra*, the Court demonstrated the scrutiny appropriate when evaluating a conviction entirely based upon circumstantial evidence – especially where as here charges are inflammatory in nature. There, the defendants were parents charged with sexual exploitation of their daughter, who was between seven- and nine-years-old at the time of the alleged offense. *Id.*, 852 P.2d at 983. A jury found them guilty, but the trial court arrested judgment based upon insufficient evidence. *Id.* The Court of Appeals affirmed. *Id.* (citing *Workman*, 806 P.2d 1198 (Utah Ct. App. 1991)). The Supreme Court granted the state's petition for certiorari review.

The state's theory in *Workman* was that the parents were aware that a young man in the U.S. Navy took a picture of their young daughter with her buttocks exposed for his personal sexual gratification. *Id.*, 852 P.2d at 983-84. The state marshaled considerable circumstantial evidence in support of the conviction. The sailor had given the young girl gifts including panties and bras. *Id.*, at 983. Her mother was told the sailor had kissed and inappropriately touched her daughter in a swimming pool. *Id.*, at 986. The mother found the sailor and her daughter in bed on at least two occasions, and she reprimanded the sailor each time. *Id.* On the date in question, the sailor was photographing the girl in a scanty, "French-cut" gymnastics suit he had purchased. *Id.*,

at 983, 985 n.3. Both the mother and the father were present in the bedroom when and where the photos were taken. *Id.*, at 983. Each photo shows the parents on the bed. *Id.* Prior to taking the photo at issue, the sailor exposed the girl's buttocks and posed her leaning against the very bed on which her parents were sitting. *Id.* In that particular photo, the father is looking at the camera, but his view of the girl's buttocks may have been obscured. *Id.*, at 983-84. The mother is shown only from the waist down. *Id.*

The sailor actually testified at the preliminary hearing that the parents knew the nature of the photo and were angry. *Id.*, 852 P.2d at 984. At trial, according to the Court of Appeals, "[The sailor] equivocate[d] on whether Mr. and Mrs. Workman were aware that he was taking pictures. At one point in his trial testimony, [the sailor] claimed they knew and they were angry at him for taking the photo. He also claimed that they did not know he was taking the photo." *Workman*, 806 P.2d at 1200; see also *Workman*, 852 P.2d at 984 (the Supreme Court noting that "at trial he testified that he could not remember the Workman's reaction, but guessed that Mrs. Workman was upset").

From this vast array of circumstantial evidence, the jury inferred that the parents knew the sailor was photographing their daughter's bare buttocks for the purpose of sexual gratification. *Workman*, 852 P.2d at 983. The Court, however, affirmed the trial court's arrest of judgment. It warned that inference based upon "speculation" can never support a guilty verdict:

When, as here, the evidence consists solely of undisputed, circumstantial evidence, the role of the reviewing court is to determine (1) whether there is any evidence that supports each and every element of the crime charged, and (2) whether the inferences that can be drawn from that evidence have a basis in logic and

reasonable human experience sufficient to prove each legal element of the offense beyond a reasonable doubt. A guilty verdict is not legally valid if it is based solely on inferences that give rise to only remote or speculative possibilities of guilt.

Workman, 852 P.2d at 985.

Despite the parents' proximity to their daughter, the father looking right at the camera, and their awareness that the sailor was photographing their daughter in a gymnastics suit styled in the manner of a "French-cut" swimming suit, the court concluded that any inference that the parents knew the sailor was photographing their daughter's bare bottom was too speculative. *Id.*, 852 P.2d at 985 & n.3. It noted that the father's actual view of his daughter may have been obscured at the precise moment the photo was taken. *Id.* at 985. It observed, since the photo pictured only the mother's bottom half, that it was possible she was looking elsewhere when the sailor exposed her daughter's bottom and took the photo. *Id.* It necessarily rejected that part of the sailor's testimony that the parents were aware of the nature of the photo. *See id.*

The Court also found "no inference whatsoever that they *knew* that [the sailor] would use the picture for sexual arousal." *Id.*, 852 P.2d at 985 (emphasis in original). The Court itself did not find the photo "alluring, sensual, or sexual[.]" *Id.* It noted that while the sailor admitted to sexually abusing the girl on other occasions, the sailor had not testified as to the nature of this particular photo, nor was there expert testimony that a convicted pedophile might be aroused by the bare buttocks of the girl he inappropriately pursued over the course of three years. *Id.* at 986. It concluded:

In short, the state presented *no evidence* that the photo was, or could be, sexually arousing, and of equal importance, there is *no evidence* that [the sailor] took the photograph for that purpose. The

total lack of evidence on this fact alone is sufficient basis for affirming the [arrest of judgment].

Workman, 852 P.2d at 986 (emphasis in original).

Workman, *supra*, teaches that convenient speculation to bridge gaps within a circumstantial evidence case may never support a guilty verdict. Moreover, when attributing guilt to a defendant based in large part upon another's criminal actions, firm evidence must link the defendant to the primary actor's illegal behavior. See *id.*, 852 P.2d at 985.

ARGUMENT

The Amended Information (Oct. 10, 2006) charges Warren Jeffs with being an accomplice to Allen Steed's alleged rape of Elissa Wall. Pursuant to Jury Instruction 14-A, count I is alleged to have occurred between April 23, 2001 and May 12, 2001; and count II between May 13, 2001 and September 30, 2003.

The crime of rape occurs where "the actor has sexual relations with another person without the victim's consent." Utah Code Ann. § 76-5-402(1) (2007). Because the statute does not involve strict liability or otherwise define the culpable mens rea, "intent, knowledge, or recklessness shall suffice to establish criminal responsibility." Utah Code Ann. § 76-2-102 (1983).

The State in this case relied upon three theories to establish lack of consent:

(1) the victim expresses lack of consent through words or conduct;

....

(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Subsection 76-5-404.1(4)(h); [or]

(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4)[.]¹

Utah Code Ann. § 76-5-406 (2003).

Accomplice liability is defined as follows:

Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

Utah Code Ann. § 76-2-202 (1973).

As applied to this case, each count requires proof of guilt beyond any reasonable doubt that Jeffs intentionally, knowingly or recklessly solicited, requested, commanded or encouraged, or intentionally aided, Steed to have intercourse with Ms. Wall without consent, and that Steed then had intercourse without consent.

The insufficiency of the evidence proving Count I and Count II are separately discussed in Points I and II.

¹ The State expressly waived any claim that non-consent resulted from either Jeffs or Steed being a religious counselor as defined in § 76-5-406(12)(b) ("religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.").

I. THE EVIDENCE IS INSUFFICIENT TO PROVE COUNT I BECAUSE JEFFS NEVER ENCOURAGED STEED TO RAPE MS. WALL OVER HER SOBS AND PROTESTS

A. Factual Summary.²

The facts relevant to Count I are summarized below. To determine whether they are sufficient to support a conviction, they are viewed in a light most favorable to the verdict. *E.g., Fedorowicz*, 2002 UT 67, ¶ 40. Especially where as here all the evidence is circumstantial, it must be scrutinized to ensure that a reasonable juror could find each element proved beyond a reasonable doubt. *Workman*, 852 P.2d at 985. "But this does not mean that the court can take a speculative leap across a remaining gap in order to sustain a verdict. The evidence, stretched to its utmost limits, must be sufficient to prove the defendant guilty beyond a reasonable doubt." *Petree*, 659 P.2d at 444-45.

During April 2001, Ms. Wall's stepfather, Fred Jessop, told Ms. Wall that the prophet had determined that she was to be married. Ms. Wall told her stepfather that she did not want to get married. Ms. Wall testified that she was trained that if she refused to be married, she would not be welcome in her stepfather's house. Her stepfather told her to speak to the Defendant and Jeffs' father, Rulon Jeffs, who was the prophet of the church of the Fundamentalist Latter Day Saints. Ms. Wall spoke to the Defendant on the phone and explained her opposition to a marriage. The Defendant told her that he would discuss the matter with the prophet. Approximately two days following the phone conversation, Ms. Wall's stepfather told her that the prophet wanted her to go through with the wedding. The record contains no evidence that the

² The facts set forth in this motion and memorandum are based upon notes and recollections of the testimony adduced at trial.

her to go through with the wedding. The record contains no evidence that the Defendant played a role in deciding Ms. Wall should be married, or in these first communications regarding the marriage, other than to relay information to and from the prophet.

Soon thereafter, Ms. Wall learned during a family gathering that Allen Steed was to be the groom. She confirmed through her stepfather that the prophet had selected Steed to be her husband. Ms. Wall knew Steed. They were cousins and they had previously lived on the same ranch. Ms. Wall did not like Steed.

Ms. Wall arranged for a meeting with the prophet. Ms. Wall met with the prophet and the Defendant. When Ms. Wall explained her concerns regarding the marriage to the prophet, he told her to follow her heart. Jeffs left the meeting to conduct other church business. When he returned, he spoke with the prophet and then spoke to Ms. Wall. The Defendant told Ms. Wall the prophet said to go forward with the marriage and her heart was in the wrong place if she did not marry Steed.

Ms. Wall testified that she felt pressure to go forward with the marriage from every aspect of her life. She said that everyone she trusted was pressuring her to go forward with the marriage—this included Ms. Jessop, her stepfather and bishop, and family members. Ms. Wall agreed that it was her mother who finally convinced her to go forward with the ceremony.

The wedding ceremony was officiated by the Defendant. When Ms. Wall became hesitant during the ceremony, the Defendant invited her mother to come forward to encourage Ms. Wall to accept Steed as her husband. Her mother squeezed Ms. Wall's hand, and Ms. Wall completed the ceremony by saying, "I do."

Toward the conclusion of the ceremony, the Defendant repeated a sentence that is part of every FLDS marriage ceremony: "And I say unto you, be fruitful, and multiply and replenish the earth, that you may have joy and rejoicing in your posterity in the day of the Lord Jesus." (A copy of the Marriage Covenant received at trial is attached hereto as **Exhibit A.**)

The Defendant had no further contact, direct or otherwise, with either Ms. Wall or Steed prior to the act of intercourse giving rise to Count I. Approximately three weeks following the ceremony, Steed allegedly forced himself upon Ms. Wall. Ms. Wall had previously rebuffed Steed's efforts at intimacy. On the night in question, Steed told Ms. Wall that it was time for her "to be a wife." In response, Ms. Wall exclaimed, "I don't know what you're doing." She resisted, repeatedly saying, "Don't do this, don't do this." Ms. Wall cried and sobbed throughout the entire incident.

B. The Evidence Is Insufficient to Support a Conviction on Count I.

This Court may not "take a speculative leap across a remaining gap in order to sustain a verdict. The evidence, stretched to its utmost limits, must be sufficient to prove the defendant guilty beyond a reasonable doubt." *Petree*, 659 P.2d at 444-45. Closely related to this admonition, is the necessity in a circumstantial evidence case to ensure that any reasonable alternative hypothesis is disproved. *E.g.*, *State v. Shumway*, 2002 UT 124, 63 P.3d 94.

In *Shumway*, the murder victim had multiple stab wounds, some presumably caused by a bloody butcher knife discovered at the scene, and others caused by a smaller knife. *Id.*, 2002 UT 124, ¶¶ 15-16. The initial search of the crime scene did not uncover the smaller knife. *Id.* at ¶ 16. Investigators then left the scene unsecured. *Id.*

The state claimed the murder defendant must have secreted the second knife. *Id.* at ¶ 15. The defendant had ample opportunity to hide the second knife, and had indeed altered other crime scene evidence. *Id.* at ¶ 17. Some time later the defendant wrote in his journal: "Do they know what kind of knife is the other." *Id.* The state argued this established that the defendant knew about a second knife, something only the murderer would know. *Id.*

The court reversed the defendant's conviction in large part because there was too little evidence disproving other reasonable explanations for the missing knife:

Other reasonable explanations exist why the instrument was not found. It could have fallen behind or underneath pieces of furniture in the living room where officers missed it in their search. It could have been found and discarded by the crime scene cleaners. Officers did not contact the crime scene cleaners after the clean-up to inquire whether they had found any such instrument. The journal entry is too terse and ambiguous to be reasonably relied upon. Only speculation supports the conviction. As we observed in *Petree*, 659 P.2d at 444-45, while we review the evidence and all inferences in the light most favorable to the verdict, and stretch the evidentiary fabric as far as it will go, we cannot take a speculative leap across a remaining gap in order to sustain a verdict.

Shumway, 2002 UT 124, ¶ 18.

The State's theory as to Count I in this case is that the Defendant somehow encouraged Steed to rape Ms. Wall through (1) the pre-marriage communications, (2) performing the marriage, (3) an eight-word phrase from the marriage ceremony, and (4) the FLDS religious principles of obedience.

1. Pre-marriage Communications.

Regarding the pre-marriage communications, neither Jeffs, nor the prophet, Ms. Wall's stepfather or Ms. Wall's mother said anything about intimacy, intercourse or

children, let alone encouraged Steed to commit rape or Ms. Wall to endure it. Jeffs neither decided it was time for Ms. Wall to marry, nor that Steed should be the groom. In response to Ms. Wall's first attempt to discuss the marriage, Jeffs merely acted as a conduit for communication between the prophet and Ms. Wall's stepfather. During Ms. Wall's second communication with Jeffs and the prophet, Jeffs did nothing more than to encourage Ms. Wall to remain faithful to FLDS theology about placement marriages and marry Steed. This also is precisely what many other people told Ms. Wall, including her stepfather, mother and other family members. In fact, Ms. Wall conceded that her mother played the greatest role in her decision to go forward with the marriage, and also ultimately to say, "I do."

Steed and Jeffs never once discussed any aspect of marriage or sex before the wedding ceremony.

The evidence viewed in a light most favorable to the verdict establishes nothing more or less than Jeffs, along with the prophet, Ms. Wall's stepfather and other family members, and especially Ms. Wall's mother, encouraged Ms. Wall to marry Steed. No evidence, circumstantial or otherwise, exists from which a reasonable juror might infer that in the course of these two interactions between Ms. Wall and Jeffs, that Jeffs encouraged Steed to rape Ms. Wall within a few weeks.

2. Performing the Marriage.

In his closing statement, Mr. Belnap emphasized that "but for" the Defendant performing the wedding ceremony, Ms. Wall would not have had non-consensual intercourse with Steed. The "but for" analysis does not establish proof beyond a reasonable doubt that the Defendant intentionally, knowingly, or recklessly commanded,

encouraged, solicited, or requested Steed to have unconsented sex with Ms. Wall. Marriage is not the equivalent of sexual relations, consensual or non-consensual. None of Ms. Wall's family equated marriage with rape; neither the mother who persuaded Ms. Wall to go forward with the marriage, nor Ms. Musser, the sister, who helped sew the wedding dress and decorated the "Honeymoon Hideout." No reasonable juror could conclude that performing the marriage was intentionally aiding in the rape of Ms. Wall.

3. Eight Words from the Old Testament.

The State's evidence supporting Jeffs' conviction on Count I also relies upon eight words: "Be fruitful, and multiply and replenish the earth[.]" No reasonable juror could infer from this sentence fragment that Jeffs was encouraging Ms. Wall to commit rape or Ms. Wall to submit to intercourse against her will.

The eight word sentence fragment is not a command to commit or submit to rape. Being fruitful, multiplying and replenishing is precisely what God instructed all of humanity on the sixth day in the Old Testament's account of creation. *Genesis 1:28*. Yet no one cites this command, albeit literally interpreted for centuries by Christians and Jews, as license for rampant, nonconsensual sexual intercourse. God also commanded Noah and his sons to be fruitful and multiply. *Genesis 9:7*. Yet no one entertains for an ephemeral second the thought that God was authorizing Noah and his sons to commit rape.

These words have been repeated in countless marriage ceremonies by virtue of their inclusion in the "Form of Solemnization of Matrimony," adapted from the Church of England's *Book of Common Prayer* (1662). This ceremony arguably is the most widely known marriage ceremony in the Christian world. If the marriage involves a fertile

woman, it requires the priest to beseech God to make the couple fruitful for the purpose of increasing human numbers:

This Prayer next following shall be omitted, where the Woman is past child-bearing.

O MERCIFUL Lord, and heavenly Father, by whose gracious gift mankind is increased; We beseech thee, assist with thy blessing these two persons, that they may both be fruitful in procreation of children, and also live together so long in godly love and honesty, that they may see their children Christianly and virtuously brought up, to thy praise and honour; through Jesus Christ our Lord. *Amen.*

Id.

The ceremony also requires that one of two passages from Psalms be read or sung, including Psalms 128. *Id.* Psalms 128 instructs the groom that his bride "shall be the fruitful vine," from which shall spring "children like olive branches [] round thy table." *Id.* (quoting Psalms 128:3).³ Therefore countless thousands of couples have asked God to facilitate a bride's fertility, and nearly as many grooms have been advised that their brides indeed "shall be . . . fruitful." In the cases of marital rape that certainly have occurred following these ceremonies, has another presiding official ever been prosecuted as an accomplice to rape?

³ The whole of Psalms 128, as set forth in the Common Book of Prayer, reads as follows:

BLESSED are all they that fear the Lord: and walk in his ways.
 For thou shalt eat the labour of thine hands: O well is thee, and happy shalt thou be.
 Thy wife shall be as the fruitful vine: upon the Ms. Walls of thine house;
 Thy children like the olive-branches: round about thy table.
 Lo, thus shall the man be blessed: that feareth the Lord.
 The Lord from out of Zion shall so bless thee: that thou shalt see Jerusalem in prosperity all thy life long;
 Yea, that thou shalt see thy children's children: and peace upon Israel.
 Glory be to the Father, and to the Son: and to the Holy Ghost;
 As it was in the beginning, is now, and ever shall be: world without end. *Amen.*

The word "ceremony" itself connotes symbolism or formal ritual, not a specific command. The *Merriam-Webster's On-Line Dictionary* defines ceremony as follows:

1: a formal act or series of acts prescribed by ritual, protocol, or convention <the marriage ceremony> 2 a: a conventional act of politeness or etiquette <the ceremony of introduction> b: an action performed only formally with no deep significance c: a routine action performed with elaborate pomp 3 a: prescribed procedures : USAGES <the ceremony attending an inauguration> b: observance of an established code of civility or politeness <opened the door without ceremony and strode in>

<http://www.merriam-webster.com/dictionary/ceremony> (Oct. 30, 2007).

In fact, the eight-word litany about multiplying is but part of a longer phrase from the official FLDS marriage ceremony known as The Marriage Covenant. (The Marriage Covenant is set forth in *In Light and Truth* and is attached hereto as **Exhibit A**.) The entire sentence is: "And I say unto you, be fruitful, and multiply and replenish the earth, that you may have joy and rejoicing in your posterity in the day of the Lord Jesus." *Id.* Thus being fruitful and multiplying must be read in the context of joy in the spirit of "the Lord Jesus" – not encouraging rape.

No reasonable juror could conclude this eight-word Old Testament idiom constitutes encouragement or license to commit rape, or a command to endure intercourse against one's will. Imagine the mischief if such symbolic or ceremonial terms could give rise to criminal liability. A rabbi, priest or minister could be criminally liable as an accomplice for urging adherence to the Old Testament if someone in his or her flock: "abandoned" an uncircumcised boy (Genesis 17:14); murdered another who claims to be a witch (Exodus 22:18); killed a man who is intimate with another man

(Leviticus 20:13); stoned to death another who curses and blasphemes during an argument (Leviticus 24:13-16); forced another to leave a house or settlement because the other has a disease or disability (Numbers 5:1-4). In a different context, woe be the cheerleaders who just yelled, "Hit 'em again, hit 'em again, harder, harder," if one football player then violently assaults an opposing player between plays.

Further, Ms. Wall did not testify that the eight words meant to her that she was required to try having children immediately following the marriage ceremony – let alone submit to intercourse against her will. Any such inference is pure speculation. Rather, she testified that any sense of urgency derived from knowing other married couples had children, so she believed she should as well.

4. FLDS Principles of Obedience.

Ms. Wall testified that long-standing FLDS doctrine regarding a wife's subservience and obedience to her husband somehow either encouraged Steed to commit rape, or pressured Ms. Wall into submitting to intercourse against her will. To the extent that this theory augmented the State's other theories regarding Count I (e.g., premarital counseling, performing the marriage and the sentence fragment), the following applies to subsections 1, 2 and 3, *supra*. A reasonable juror could not find Jeffs' guilty beyond a reasonable doubt based upon reasonable inferences drawn from this long-standing doctrine for the reasons set forth below.

First, Jeffs never discussed obedience, subservience or intercourse with Steed prior to the intercourse that was the State's basis for Count I. Next, Jeffs himself had but one discussion of substance with Ms. Wall prior to the ceremony. That is where Jeffs told Ms. Wall that her heart was in the wrong place if she did not respect the

prophet's plan for her to marry Steed. Ms. Wall herself testified that her stepfather, other family members and especially her mother exercised the most influence upon her decision to go forward with the marriage. No one equated marriage with rape. Neither the mother who told her to go ahead with the marriage, nor her sister Rebecca Musser, who helped sew the wedding dress and decorated her bedroom as the "Honeymoon Hideout" believed that the marriage would lead to a rape.

Against this background, Ms. Wall's claim that Jeffs' teachings from the Alta Academy and general FLDS principles of obedience to the husband overcame her will are unreasonable and should be disregarded. Ms. Wall's interpretation of an absolute obedience conflicts with Jeffs' actual teachings of which Ms. Wall was aware.

Ms. Wall also acknowledged that she had heard Jeffs teach that marital relations are proper *only* if welcomed by the wife: "I have heard our Prophet say, 'A man should only have those marital relations with a wife if she invites it[.]'" February 14, 1999, Meeting House, **Exhibit B**. *Id.* at 13.

Jeffs taught that force in marriage is *never* appropriate because it contradicts the very Spirit of God: "The proper hugging, a kiss, proper touching and drawing close, that is proper as the Spirit of God is with you. But *there is no force* in the marriage of Celestial Marriage; all with an eye single to the glory of God." *Id.* (emphasis added). In turn, the "Spirit of God" means, "The Spirit of peace, calmness, joy and love." *Id.* at 14.

Moreover, if a husband is displeased with a wife's behavior, he should respond with "kindness and love." *Id.* at 10; see also *id.* at 11 ("The way you can tell you have the Spirit of God is a feeling of peace, joy, love. . . . It is a smile within, even in the midst of challenges, and tribulation, and pain.")

And if someone is ornery, and didn't do their duty, there is the perfect opportunity to show them that keeping sweet is more powerful than all the complaining. Say "I still love you, but we need to do this better." Do not answer them in the same spirit.

Id. at 10.

Not only are others' comments regarding subservience and obedience not imputable to Jeffs, but whatever general counsel regarding obedience and subservience Jeffs may have provided must be considered in the context of his precise counsel. Specifically, that force is never permitted and intimate relations may only occur upon the wife's invitation; all of which Ms. Wall acknowledged having heard Jeffs teach and preach.

Certainly Jeffs did not intentionally or knowingly facilitate Steed's rape shortly following the marriage ceremony. As is discussed *surpa*, Point II, Jeffs was completely unaware that the couple might be having intercourse until 2003, long after the outside date provided for Count I. Having children and having sex are synonymous in the FLDS religion and culture. Thus, when Jeffs asked in 2003 whether the couple had tried having children, and suggested that they consider it, Jeffs was confirming his lack of knowledge that the couple was having sex, consensual or otherwise.

Nor did Jeffs recklessly contribute to Steed's alleged rape shortly after the marriage ceremony. See Utah Code Ann. § 76-2-103(3) (2007) (one is reckless if he "consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur"). Jeffs reasonably assumed that Ms. Wall understood force in marriage was never permitted, and that she understood it was her role to invite – or reject – intimacy. He reasonably assumed that if Steed were dissatisfied with Ms.

Wall's reaction to his overtures, Steed would react with kindness – not by forcing Ms. Wall to have sex over her protests and sobs.

Conversely, if Ms. Wall interpreted Jeffs' actual teachings as authorizing Steed to have intercourse without her consent, her interpretation was *unreasonable*. Jeffs never said, taught or counseled anything from which could be reasonably inferred his conscious disregard that Steed would force Ms. Wall to have intercourse without her consent.

Also important is that, when viewed in a light most favorable to the verdict, the evidence is that Steed forced Ms. Wall to have intercourse as she was “express[ing] lack of consent through words or conduct.” Utah Code Ann. § 76-5-406(1). Ms. Wall was crying, sobbing, and repeatedly beseeching Steed, “Don't do this.” Thus, neither “entice[ment]” nor “position of special trust” played any role whatsoever in Ms. Wall's non-consent giving rise to Count I of the Amended Information. Compare Utah Code Ann. § 76-5-406(10) (trust), (11) (entice). In other words, no evidence exists that Ms. Wall's non-consent related in any way to Jeffs' position of trust or enticement. The only reasonable inference from the State's evidence is that Steed simply forced himself on Ms. Wall over her affirmative protestations.

The reasonable hypothesis left unchallenged by the State's evidence is that Steed acted on his own in allegedly forcing Ms. Wall to have intercourse over her protests and sobs. The evidence is clear that Steed acted independently of any reasonable interpretation of Jeff's counsel before or at the wedding ceremony. The evidence is equally clear by virtue of Jeffs' teachings of which Ms. Wall was aware that

if Ms. Wall did believe Jeffs condoned a husband's forcible rape of a wife, her belief was wholly unreasonable.

When put in context with the rest of the 329-word Marriage Covenant, as well as Jeffs' prior teachings that force in marriage was *never* appropriate, it becomes utterly untenable that Jeffs encouraged Steed to rape Ms. Wall over her sobs and protests. Any conclusion to the contrary consists of pure and impermissible speculation.

II. THE CIRCUMSTANTIAL EVIDENTIARY FABRIC IS STRETCHED TOO THINLY TO SUPPORT A CONVICTION ON COUNT II.

A. Factual Summary

Count II effectively charges that Jeffs intentionally, knowingly or recklessly solicited, requested, commanded or encouraged, or intentionally aided, Steed to have intercourse with Ms. Wall without consent and that, as a result, Steed did actually rape Ms. Wall between May 13, 2001, and September 30, 2003.

The first meeting between Jeffs and Ms. Wall relevant to count II occurred during the early summer of 2001 following her return from her first trip to Canada. Ms. Wall mentioned nothing about intercourse or having sex against her will. Rather, Ms. Wall said that Steed touched her in ways that made her feel uncomfortable and that she did not understand. She told Jeffs she did not love Steed and asked for a release (divorce) from Steed. In response, Jeffs counseled Ms. Wall that she was not living up to her wedding vows, she should repent, she should obey her husband, and she should give herself "mind, body and soul" to her husband.

Following this meeting, Ms. Wall told Steed she did not love him, and did not want to spend eternity with him, as husbands and wives are believed to do pursuant to

FLDS doctrine. During this timeframe, she also told Steed she hated him and considered him to be a devil with a pitchfork.

A few other meetings between Ms. Wall and Jeffs occurred over the next two years. Jeffs' counseled Ms. Wall at each session to pray together, spend time together, and love and obey Steed.

Also during this time, her sister Teresa Blackmore told her she did not have to continue being Steed's wife. Ms. Wall visited Ms. Blackmore in Canada two times during the time relevant to Count II.

During this same timeframe, Ms. Wall did not tell her mother with whom she was very close that she was being forced to have sex against her will. She did not tell either sister (Teresa Blackmore or Rebecca Musser). She did not tell her mother-in-law, who was very kind to her and told her she could say "no" to her husband, that she was being forced to have sex against her will. She did not tell her brothers who had abandoned the FLDS church that she was being forced to have sex against her will. She told no one she was having sexual intercourse without her consent. Nor did she contact police until after discussing civil litigation with at least two attorneys.

Ms. Wall's testimony, in fact, attributed much of the pressure she felt regarding marital relations *not* to Jeffs, but rather to the FLDS culture and church. Ms. Wall understood she could not refuse sex with her husband. She believed she belonged to her husband and could not question him. To question her husband would risk her salvation. Ms. Wall believed a wife must obey her husband, yet she admitted Jeffs taught force was *never* allowed in marriage, a wife is *not* required to obey her husband

if he is behaving unrighteously and most importantly, that intimacy must *never* occur absent the wife's invitation.

Ms. Wall's testimony twice touched upon having intercourse with Steed during the time relevant to count II. She first generally mentioned having intercourse with Steed, even though she did not want to, a few days after her first counseling session with the Defendant. She did not say that Steed forced her on this occasion, nor did she claim that she was enticed or influenced by anyone's position of *special* trust.

Ms. Wall conceded having sex with Steed for the specific purpose of "sugaring" him up; e.g., to obtain money and other things. She conceded that Steed might well have believed she was inviting sex. She conceded this behavior started within a "few months" of the marriage. In other words, soon into the time relevant to count II, Steed might reasonably have believed all intercourse was consensual because Ms. Wall was welcoming it not as the result of improper enticement or obligation, but rather, pursuant to Ms. Wall's calculated designs—her "sugaring up" to him.

The most significant meeting between Ms. Wall and Jeffs occurred in 2003, toward the end of Count II's time frame of May 13, 2001 to September 30, 2003. Steed also was present. In response to the couple's concern that the marriage still was not working, Jeffs asked if they had tried having children. He suggested that doing so might help. He advised that having children changed perspectives. Instead of thinking about themselves, he said, a couple with children focuses upon the children. He also counseled that they should remain "sweet," a term in FLDS vernacular meaning to stay cheerful and positive.

If Jeffs did not know whether they were trying to have children, he did not know that they were having intercourse. February 14, 1999 General Meeting, (Exhibit B) (recounting Jeffs' teachings that a "man should only have those marital relations with a wife . . . to have children").

1. The Evidence is Insufficient to Prove Lack of Consent was Procured Over Her Words and Conduct, Pursuant to a Special Position of Trust or Enticement.

Jeffs accomplice liability on count II requires proof beyond a reasonable doubt that Steed had intercourse without Ms. Wall's consent pursuant to one of the State's three theories: despite "words and conduct"; through undue influence exerted by an actor in a "position of special trust"; or, because she was wrongly enticed to participate in intercourse. See Utah Code Ann. § 76-5-406(1), (10), (11). Each of these theories is addressed *infra*, §§ (a)-(c), respectively. Section (d) addresses the issue of jury unanimity.

a. Despite Words and Conduct. The first way the State may prove lack of consent is if intercourse occurred when Ms. Wall was "express[ing] lack of consent through words or conduct." Utah Code Ann. § 76-5-406(1).

Pursuant to this theory, the only way Jeffs could be guilty is if the evidence – not speculation – proved beyond a reasonable doubt that he consciously disregarded a known and unjustifiable risk that Steed would have intercourse over Ms. Wall's words and conduct.

The only evidence conceivably supporting this theory is Jeffs' advice to Ms. Wall that she be obedient and submissive, and to give of her mind, body and soul. This

counsel is insufficient to prove Jeffs' recklessly encouraged Steed to have intercourse over Ms. Wall's words and conduct for two reasons.

First, Ms. Wall testified that she had intercourse soon after her counseling session with Jeffs in May or June of 2001. Ms. Wall testified that she did not wish to have intercourse with Steed but did so anyway. The State presented no testimony, however, that this intercourse occurred over Ms. Wall's words and conduct. All other intercourse occurred because of Ms. Wall "sugaring" up Steed.

Second, the advice to be submissive and obedient, and to give herself mind, body and soul simply may not be construed as encouraging Steed to have intercourse over Ms. Wall's words and conduct. As noted above, any authority Steed might have enjoyed as a husband pursuant to FLDS doctrine ended as soon as he used that authority improperly. February 20, 1998, speech to General Meeting attached hereto as **Exhibit C**, ("*No, no, no*," a wife only obeys a husband in "righteous"). Improper use of authority would certainly include forcing a wife to have sex in exchange for other favors. *Id.* at 10 (a husband only responds to a wife with "kindness and love," and "keeping sweet is more powerful than all the complaining"), 11 (respond to all challenges with "peace, joy, love"), 14 (force is never appropriate; intimacy is proper only upon the wife's invitation).

Taken in context, therefore, Jeffs did not consciously disregard a known risk that Steed would take long-standing FLDS doctrine regarding obedience as authority to have intercourse over Ms. Wall's words and conduct.

Jennie Pipkin, for example, testified that her husband ignored her protests about having intercourse, as well and Jeffs' express direction that he obey Pipkin's wishes to

abstain. Upon learning that the husband again forced himself upon Pipkin, Jeffs effectively terminated Pipkin's marriage within two days.

There simply exists no evidence that Jeffs consciously disregarded a known risk that Steed would interpret the advice about obedience as license to forcibly rape Ms. Wall.

b. Through Undue Influence Exerted By An Actor In A "Position Of Special Trust." A position of special trust includes only a person who is "in a position of authority, who, by reason of that position is able to exercise *undue* influence over the victim[.]" Utah Code Ann. § 76-5-404.1(4)(h) (2007) (emphasis added) (incorporated by reference in Utah Code Ann. § 76-5-406(10)). "Undue influence," in turn, is defined as an affirmative act by one person such that it deprives another person of free will:

The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective. • Consent to a contract, transaction, or relationship or to conduct is voidable if the consent is obtained through undue influence. -- Also termed *implied coercion*; *moral coercion*.

Black's Law Dictionary (8th ed. 2004).

As noted above, any authority Steed might have enjoyed as a husband or priesthood head pursuant to FLDS doctrine, ended pursuant to FLDS doctrine, as soon as he used that authority improperly. February 20, 1998, (Exhibit C), ("No, no, no," a wife does not have to follow a husband unless the husband is "righteous"). A wife does not "have to go to hell" with a husband who is improperly behaving. *Id.* "No Priesthood man has the right to have [the wife] to do wrong." *Id.* at 63. A wife's obligation of obedience extends only as far as the husband actually "obeys the Lord." *Id.* at 17.

Steed's improper use of authority, thus ending any obligation of obedience, certainly would include having intercourse that Ms. Wall did not invite. "A man should only have those marital relations with a wife if she invites it[.]" *Id.* at 13. Most importantly, Ms. Wall did not testify that any sexual intercourse during the timeframe of Count II occurred as a result of Steed exercising undue influence over her because he was her husband. Ms. Wall was not obedient and subservient to Steed in any aspect of their marital relationship.

Jeffs cannot be held to have occupied a position of special trust by virtue of his *prior* station as a teacher. The law links special trust to actual authority: "[P]osition of special trust' means that position occupied by a person in a position of authority, who by reason of that position, is able to exercise undue influence over the victim[.]" Utah Code Ann. § 76-5-404.1(4)(h). Jeffs enjoyed no authority over Ms. Wall by virtue of being her former teacher. He could no longer alter her grades, or in any way affect her status in school. He held no authority as a teacher during the time in question, therefore he did not hold a position of special trust by virtue of having been Ms. Wall's teacher.

Jeffs could fairly be said to occupy a position of trust by virtue of being a religious leader. Utah Code Ann. § 76-5-404.1(4)(h). The State, however, waived any claim at the preliminary hearing that Jeffs' position of special trust stemmed from being a religious counselor pursuant to § 76-5-406(12). A religious counselor is defined as including "a minister, priest, rabbi, bishop, or other recognized member of the clergy." Utah Code Ann. § 76-5-406(12)(b). This definition is synonymous with being a religious leader under § 76-5-404.1(4)(h). Where the state waives a claim, even one which may have been proved at trial, it cannot be resurrected to stave off a challenge to the

sufficiency of the evidence supporting the claim actually pursued. *E.g.*, *State v. Jacobs*, 2006 UT App 356, ¶¶ 9-10, 144 P.3d 226.

In *Jacobs*, the defendant was convicted for forcible sexual abuse in violation of Utah Code Ann. § 76-5-404 (2007). Section 76-5-404 criminalizes touching a victim on a prohibited body part, and also for taking indecent liberties even where no prohibited touching occurred. *Id.* at ¶ 9. The state, however, waived any claim under the “less restrictive” indecent liberties provision, and instead pursued conviction at trial under the more stringent and specific touching prohibition. *Id.* In the course of finding insufficient evidence to support a conviction on the more exacting touching theory, the Court of Appeals noted that the state had waived the less exacting theory, and thus the less exacting theory would not be considered on appeal. *Id.* at ¶ 10. In the case at bar, the State effectively waived any claim that Jeffs occupied a position of trust pursuant to his status as a religious leader.

In the alternative, the evidence is insufficient to establish that Jeffs consciously disregarded an unjustifiable risk that counseling obedience and giving of one’s mind, body and soul would persuade Ms. Wall to submit to intercourse against her will. As noted above, Ms. Wall knew marital intimacy was wrong unless invited by the wife. She knew that FLDS doctrine required obedience only if the husband behaved righteously. Seeking uninvited, unwelcomed intimacy would not be approved as acting righteously.

Even absent such knowledge by Ms. Wall, if she believed that Jeffs, pursuant to his status as a religious leader, was commanding her to submit to nonconsensual intercourse merely by urging her to be obedient, her belief was wholly unreasonable. So unreasonable, in fact, that it never would have crossed Jeffs’ mind such that he

might consciously disregard it. A wife's obedience and subservience certainly is not unique to the FLDS. It is common to every present-day patriarchal belief system. Dating back to the "Form of Solemnization of Matrimony," adapted from the Church of England's *Book of Common Prayer* (1662), the wedding ceremony with which we are most familiar emphasizes these very concepts. Whereas the groom pledges to "love her, comfort her, [and] honour," the bride pledges to "obey him, and serve him, love, [and] honour." *Id.* (emphasis added). The groom promises to "love and to cherish"; the bride promises to "love, cherish, and to obey." *Id.* (emphasis added). In a final indication of subservience, the priest or minister pronounces the couple not as husband and wife, but "man and wife." *Id.*⁴

Much as the eight-word sentence fragment encouraging a couple to multiply and be fruitful could not reasonably be construed as encouraging nonconsensual intercourse, neither may mere repetition of advice common to every patriarchal society – especially when considered in the context of well-known FLDS doctrine that intimacy is wrong unless invited by the wife, and any obligation to obey ends as soon as the husband seeks intimacy without first being invited.

⁴ In one sense, this goes to the very heart of what is fundamentally wrong with this prosecution. Jeffs made up nothing. He said nothing new. He was but a mouthpiece for one long-standing patriarchal doctrine. The very same counsel was given his father, the prophet before him and the prophet before him. This court may take notice that Jeffs' advice is common to the LDS Church, many American conservative protestant religions, the Amish, etc. Assuming for the sake of argument, only, that this counsel will inspire an otherwise reasonable person to engage in forcible rape – which it may not – Jeffs is not the proper party on trial. All these modern-day American religions are. This is not an issue for which one man should be criminally prosecuted as an accomplice. If indeed this very common counsel does cause actionable harm, relief lies in the civil justice system – or, more likely still, through slow and sometimes painful social evolution such as has occurred in recent decades.

c. Because She Was Wrongly Enticed To Participate In Intercourse.

Enticement pursuant to § 76-5-406(11) means “to wrongfully solicit, persuade, procure, allure, attract, draw by blandishment, coax or seduce. To lure, induce, tempt, incite, or persuade a person to do a thing.” *Gibson*, 908 P.2d at 356. Not only did Jeffs’ counsel fail to rise to the level of wrongful solicitation or persuasion required under § 76-5-406(11), but any interpretation by Ms. Wall that it did was wholly unreasonable.

As a starting point, the aforementioned counsel simply is not unapproved or wrongful – it is the longstanding and time-honored doctrine of the FLDS Church and traces its roots back to the founders of the LDS Church. Moreover, it is common to every patriarchal belief system past and present.

Recklessness requires “a gross deviation from the standard of care that an *ordinary person* would exercise[.]” Utah Code Ann. § 76-2-103(3). It simply cannot be said that Jeffs consciously disregarded a known and unjustifiable risk, and thus was reckless: thousands upon thousands of otherwise ordinary people, past and present, have subscribed precisely to the belief that a wife should be submissive and obedient, and that she should give of mind, body and soul. The evidence is insufficient to prove that Jeffs “grossly deviated” from anything these thousands of persons have said and still say. The court may take notice that this traditional patriarchal advice has not caused an epidemic of rape so common that the advice actually creates an unjustifiable risk.

Moreover, when taken in context, this traditional doctrine cannot reasonably be construed as requiring submission to intercourse against one’s will. Any such interpretation is wholly unreasonable. As already noted in other contexts, Ms. Wall

knew she held the key – intimacy should not occur unless and until she invited it. Ms. Wall knew that any obligation owed to her husband ended as soon as he sought intimacy without her invitation. The possibility that Ms. Wall would interpret Jeffs' generic patriarchal advice as compulsion to consent to intercourse against her will was so remote that it did not constitute an unjustifiable risk of which Jeffs could consciously disregard. Nothing in the evidence put Jeffs on notice that his advice might be so misinterpreted.

d. **Jury Unanimity.** The trial court's failure to issue a jury instruction as to unanimity on the three different alternatives to the essential element of non-consent requires reversal unless sufficient evidence exists from which a reasonable juror could find beyond a reasonable doubt that each alternative was proved.

Article I, section 10 of the Utah Constitution only requires jury unanimity as to the single crime charged, necessarily requiring proof beyond a reasonable doubt as to each essential element. *State v. Tillman*, 750 P.2d 546, 567 (Utah 1987) (citing *People v. Sullivan*, 173 N.Y. 122, 65 N.E. 989 (1903)). In so holding, the Utah Supreme Court rejected the defendant's argument that each disjunctive alternative that, by itself, might satisfy an essential element, is subject to jury unanimity. *Id.* In other words, if an essential element can be satisfied by any one of several alternatives, no *per se* requirement exists that the jury be instructed that it must unanimously agree on at least one of the alternatives. See *id.*

In *Tillman*, *supra*, the Court recognized and considered whether an exception to this rule applied to the case there on review. The exception to jury unanimity on alternatives to an essential element exists where one of the alternatives is *not*

supported by sufficient evidence. *Id.*, 570 P.2d at 567 n.73. So if sufficient evidence exists from which a reasonable juror could conclude each individual alternative was proved beyond a reasonable doubt, no error lies in refusing a unanimity instruction regarding each alternative. *Id.* Where, however, any one of the alternatives is *not* supported by constitutionally sufficient evidence, it is reversible error to have refused to issue a unanimity instruction as to each alternative. The reason is that without some indication that the jury relied on an alternative supported by sufficient evidence, it is possible the jury relied upon an alternative what was not supported by sufficient evidence. *Id.* at 567.

In the case at bar, lack of consent is an essential element of rape. Utah Code Ann. § 76-5-402(1). The State proposed there separate and distinct alternatives by which non-consent could be established: despite "words and conduct"; through undue influence exerted by an actor in a "position of special trust"; or, because she was wrongly enticed to participate in intercourse. See Utah Code Ann. § 76-5-406(1), (10), (11). Pursuant to *Tillman*, *supra*, no unanimity instruction was required as to these three alternatives – unless there was insufficient evidence to prove any one of them.

There was insufficient evidence to support any one of the three alternatives for finding non-consent. The argument, however, may be strongest as to the non-consent by "words and conduct" theory. See Utah Code Ann. § 76-5-406(1). There simply exists no evidence that Steed had intercourse over Ms. Wall's protests between May 13, 2001 and September 30, 2003. Ms. Wall testified that soon after counseling with Jeffs in May or June of 2001, that she had intercourse that she did not "want." Any conclusion that this act occurred despite her words and conduct is sheer speculation.

Then, as discussed in the previous section, from approximately early summer of 2001 onward, the subsequent acts of intercourse occurred because of Ms. Wall "sugaring" up Steed. Ms. Wall herself testified that Steed may reasonably have believed that she was consenting to intercourse. In any event, there is not sufficient evidence to conclude beyond a reasonable doubt that these acts occurred despite Ms. Wall's "words and conduct." Utah Code Ann. § 76-5-406(1).

The defendant requested an instruction as to unanimity regarding the three non-consent theories, and was refused.

Should this court determine that any one of these theories is unsupported by constitutionally sufficient evidence, it must arrest judgment.

2. The Evidence was Insufficient that Jeffs Recklessly Contributed to a Rape.

The evidence is insufficient to support a finding that Jeffs recklessly contributed to a rape during the time frame of Count II, May 13, 2001 and September 30, 2003. First, Jeffs teachings contradict a belief or support of non-consensual sex. Second, Jeffs had not been told that Ms. Wall was being subjected to non-consensual sex. Third, his statements to the couple during the counseling session in 2003 (testified to by Ms. Wall) regarding whether the couple had tried to have children demonstrate that he was unaware of sexual intercourse taking place. The evidence at trial was insufficient to support a verdict that Jeffs recklessly contributed to a rape.

No evidence exists that Ms. Wall told Jeffs she was having intercourse before or during this time period, let alone nonconsensual intercourse. In fact, during this period,

Ms. Wall did not complain of nonconsensual intercourse to anyone, including Jeffs, her mother, her sisters, her friends, her stepfather or the police.

More to the point, Jeffs did not know Ms. Wall and Steed were having sex until 2003. Ms. Wall's statements to Jeffs during her first counseling session with him that she was uncomfortable with where Steed was touching her is not tantamount to saying my husband is forcing me to have intercourse. Touching is not synonymous with intercourse. Because there is no dating, no kissing before marriage, any physical contact may be uncomfortable and strange to either member of a newly married couple. Ms. Wall's statements did not put the Defendant on notice that sexual intercourse was occurring. Only when Ms. Wall and Jeffs met sometime in 2003, did Jeffs ask if she and Steed had tried having children, and suggested that doing so might help. He encouraged them to remain "sweet," meaning to stay cheerful and positive.

Jeffs' counsel to try having children and keeping sweet renders wholly unreasonable any inference that Jeffs had any inkling that Steed and Ms. Wall were having intercourse prior to 2003, let alone intercourse without Ms. Wall's consent. FLDS members, after all, understood that intercourse was to occur for *no* reason than to have children. Jeffs himself taught, "A man should only have those marital relations with a wife . . . to have children." February 14, 1999. As the testimony of the Keates established, it also is not uncommon for a couple to wait years before having children.

The evidence that Jeffs intentionally, knowingly or recklessly encouraged Steed to rape Ms. Wall must be proven beyond a reasonable doubt. See Utah Code Ann. § 76-2-202 (accomplice liability); § 76-5-402 (rape). Jeffs' suggestion that the couple consider having children certainly rules out any intentional encouragement of non-

consensual intercourse, or knowledge thereof prior to 2003. Moreover, considering that Ms. Wall never told Jeffs that intercourse was occurring, and never disclosed her allegations to anyone else, including her siblings, mother, mother-in-law, stepfather, father, or police, Jeffs cannot be said to have consciously disregarded:

a substantial and unjustifiable risk that the circumstances exist [that rape was occurring] or [that rape] will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

Utah Code Ann. § 76-2-103(3) (2007). Recklessness, therefore, requires a "conscious[] disregard[], not merely a failure to notice a risk of which a person "ought" to have aware. *Id.*, compare Utah Code Ann. § 76-2-103(4) (criminal negligence).

Many others, such as Ms. Wall's mother, mother-in-law, stepfather and siblings had far more contact and communication with Ms. Wall than did Jeffs. Yet no evidence exists that any one of them suspected Ms. Wall was having nonconsensual intercourse prior to 2003. Not only did no one else with whom Ms. Wall had far more day-to-day contact than Jeffs anticipate Ms. Wall's later allegations, but when Jeffs made his suggestion, neither Steed nor Ms. Wall sought to correct him. No evidence exists that these persons who knew Ms. Wall far better than did Jeffs were anything but "ordinary" persons. Utah Code Ann. § 76-2-103(3). If none of them noticed, then Jeffs was not reckless for not noticing when his contact with Ms. Wall was extremely limited, and he heard no further details of Ms. Wall's personal life than did the others.

When Jeffs suggested that the couple stay sweet and consider having children, he had no motive whatsoever to mislead the couple as to his knowledge about their

sexual experience. Jeffs' question regarding children was sincere; the implication is clear. To spin Jeffs' innocent inquiry in any other manner constitutes gross speculation. Jeffs simply did not know, nor should he reasonably have known, that the couple was having intercourse prior to 2003, when he suggested that they consider having children.

The evidence does not support a finding that Jeffs was an accomplice anytime *before* 2003, since he was unaware that the couple was by then was having sex. His teachings advocated no force and sexual relations only if a wife invites it. Jeffs teachings, lack of knowledge and his statement in 2003 are insufficient for a finding of accomplice liability under either an intentional, knowingly or reckless standard.

CONCLUSION

In *Workman, supra*, the Court found that a reasonable juror could not conclude that the parents knew the sailor was photographing their daughter's bare bottom despite their immediate proximity to the girl and the father looking right at the camera. *Id.*, 852 P.2d at 985 & n.3. It called pure speculation any conclusion that the sailor took the photo for sexual gratification even though the sailor was a convicted pedophile, because he did not testify that this was his purpose for taking the photo, and no expert testified that a convicted pedophile might be aroused by the bare buttocks of the girl he inappropriately pursued over the course of three years. *Id.* at 986.

Certainly, therefore, Jeffs' encouragement that the couple marry as directed by the prophet, and the blessing that included the eight-word Old Testament idiom, could not prove beyond a reasonable doubt that Jeffs encouraged Steed to have intercourse over Ms. Wall's protests and sobs. Likewise, Jeffs' repetition of stock patriarchal advice about remaining obedient and submissive does not prove beyond a reasonable doubt

that he recklessly encouraged Steed to have intercourse without Ms. Wall's consent, or that he somehow commanded Ms. Wall to submit to Steed against her will.

Furthermore, Jeffs teachings regarding no force in marriage, that a woman invites sexual relations and "keeping sweet" are evidence that Jeffs did not recklessly contribute to a rape. In addition, he had no knowledge that sexual relations were taking place, as demonstrated by his question to the couple in a counseling session in 2003.

WHEREFORE, the defendant respectfully requests that the court grant this motion to arrest judgment and dismiss counts I and II for insufficient evidence.

DATED this 9th day of November, 2007.

BUGDEN & ISAACSON, L.L.C.

By: Walter F. Bugden, Jr.
WALTER F. BUGDEN, JR.
TARA L. ISAACSON

WRIGHT, JUDD & WINCKLER
RICHARD A. WRIGHT

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on the ____ day of November, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap
Washington County Attorney
178 North 200 East
St. George, UT 84770

___ HAND DELIVERY
___ U.S. MAIL
___ OVERNIGHT MAIL
___ FACSIMILE:

EXHIBIT A

Chapter 4

The Marriage Covenant

Do you, Brother _____, take Sister _____ by the right hand, and receive her unto yourself to be your lawful and wedded wife, and you to be her lawful and wedded husband, for time and all eternity, with a covenant and promise, on your part, that you will fulfil all the laws, rites and ordinances pertaining to this holy bond of matrimony in the new and everlasting covenant, doing this in the presence of God, angels, and these witnesses, of your own free will and choice?

Do you, Sister _____, take Brother _____ by the right hand, and give yourself to him to be his lawful and wedded wife for time and all eternity, with a covenant and promise on your part, that you will fulfil all the laws, rites and ordinances pertaining to this holy bond of matrimony in the new and everlasting covenant, doing this in the presence of God, angels, and these witnesses, of your own free will and choice?

In the name of the Lord Jesus Christ, and by authority of the Holy Priesthood, I pronounce you legally and lawfully husband and wife, for time and for all eternity, and I seal upon you the blessings of the holy resurrection, with power to come forth in the morning of the first resurrection, clothed with glory, immortality, and eternal lives; and I seal upon you the blessings of thrones and dominions, and principalities, and powers, and exaltations, together with the blessings of Abraham, Isaac, and Jacob. And I say unto you, be fruitful, and multiply and replenish the earth, that you may have joy and rejoicing in your posterity in the day of the Lord Jesus.

All these blessings, together with all other blessings pertaining to the new and everlasting covenant, I seal upon your heads, through your faithfulness unto the end, by the authority of the Holy Priesthood, and in the name of the Father, and of the Son, and of the Holy Ghost, AMEN.

EXHIBIT B

The Father Should Place the Holy Spirit Around His Family; How We Know We Are Filled With the Holy Spirit; Priesthood Government is Persuasion Through Love

Given in the LSJ Meeting House in Colorado City, Arizona
February 14, 1999

Elder Warren Jeffs: My heart reaches out "Not me, Father, but You be the Teacher here this morning," praying that our Prophet's will is fulfilled this morning in giving us a training he desires at this time. How I love him and want to do his will. I yearn to become like God, even as our Prophet is. I want you to succeed.

Our Prophet is most concerned in this day and time that we must be filled with the Holy Spirit of God, realizing that Priesthood is God with us, and the power of the Priesthood is this Holy Spirit. To be an honorable Priesthood bearer you should be filled with that Spirit of peace, increasing in the gifts of that Spirit daily. This is what is yet ahead of us.

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God Almighty Himself dwells in eternal fire. Flesh and blood cannot go there. All corruption is devoured by the fire. Our God is a consuming fire. When our flesh is quickened by the Spirit, there will be no blood in this tabernacle.

Some dwell in higher glory than others.

Those who have done wrong always have that wrong gnawing them.

*Immortality dwells in everlasting burnings.*** All men who are immortal dwell in everlasting burnings.*

The power that makes a man a God is a fullness of the Holy Spirit of God. Our Prophet calls it the power of the Gods, and it is shown by fire. This great and full degree of the Holy Spirit, for now, embodied in this flesh, that glory is not seen by those unenlightened by the Spirit of God. But if we are filled with that Spirit and we were to pass on to the next life, that righteous Priesthood bearer would be surrounded by fire. To receive this lesson today this is what you must do at this moment, Section 67 verse 10.

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10. *And again, verily I say unto you that it is your privilege, and a promise I give unto you that have been ordained unto this ministry,*

Here is what we must do:

10. *...that inasmuch as you strip yourselves from jealousies and fears, and humble yourselves before me, for ye are not sufficiently humble, the veil shall be rent and you shall see me and know that I am — not with the carnal neither natural mind, but with the spiritual.*

11. *For no man has seen God at any time in the flesh, except quickened by the Spirit of God.*

12. *Neither can any natural man abide the presence of God, neither after the carnal mind.*

13. *Ye are not able to abide the presence of God now; neither the ministering of angels; wherefore, continue in patience until ye are perfected.*

14. *Let not your minds turn back; and when ye are worthy, in mine own due time, ye shall see and know that which was conferred upon you by the hands of my servant.*

You will only understand this lesson if you have a spiritual mind. You must strip yourself of jealousies and fears and humble yourself. The only ones that can have the Holy Spirit are the humble. And your jealousies, where you feel others are doing more than you, or have more than you, rob you of a spiritual mind. Those jealousies are the result of looking upon earthly blessings with a carnal mind. The way you fight and strip yourself of jealousy and fear is gratitude. Instead of being upset a little or dwelling upon what others do good and you cannot, thank the Lord in gratitude for what you can do. Be grateful and have this prayerful heart.

The responsibility of the Spirit of God being in the home is upon the father, the presiding Elder of that house. The power of the Priesthood is the Holy Spirit, and the first duty is for us to have that Holy Spirit in us. Before we can expect our wives and children to keep sweet, we must do it. It requires you to arise early in the morning and be the example of coming forth among your family filled with the Holy Ghost. You should have your private prayers, brethren, invoking Heavenly Father's Spirit upon your wives and children in your private prayer, placing it upon them, as it were, through your faith. Put it around them and available to them through you. Then you go forth being the example, and every word as you greet them in the morning is kindness, inviting them to love, showing them gratitude by you saying, "I am so glad to see you;" saying to your wives, "You are looking beautiful today. Thank you, my family, for keeping sweet this day. I am so glad we will love one another and build up one another." Your very first words are a build up, putting around them this influence of the Spirit of God.

If you detect a family member without that Spirit, show an increase of kindness and invitation. Smile at them. Touch them. Show you care. Stop the punishment constantly of, "Oh, if you don't keep sweet I am withdrawing from you." Be inviting. Put around them this Holy Spirit through you, for your Priesthood is the conduit of that power to your families.

Have your classes with your wives. Present to them the words of the Prophets and begin with faith on the Lord Jesus Christ. Declare yourselves openly to your family that you are for the Prophet and the redemption of Zion; and, "My dear family, I want us to be part of Uncle Rulon and his great purposes. We can only do it through keeping sweet." Your family should have sessions with you where they feel the power of the Priesthood flowing from you to them. You bring them to meeting and that is wonderful, but they must feel that Spirit through you also on a day-by-day basis. You go through the day, you say that prayer at least every hour that your family will be filled with the Holy Spirit of God. Through your faith keep it available to them. Justify the Lord in blessing them. If you are dead and empty and are not

putting forth this effort in behalf of your families, that is most probably why keeping sweet is still a challenge in your home; for the power of the Priesthood is available for those who exercise the faith and these works.

This is the work our Prophet has given us in this day and time. Our family is where our mission is performed, completed, and perfected. We are not sent out to the world to do this. Strip yourselves of jealousies, of looking at what others are doing. Go and do your work in humility and provide for your families, not just monies and food, but the greater gifts, the powers of the Priesthood. Surround them with it through your faith.

You come home at night tired, the weight of responsibility and business upon you. Don't take it out on your family. Leave the business at the business, and when you walk in the door laugh, rejoice, greet, "Good to see you. You are looking wonderful. I love you. You make me happy. What jobs did you do today?" Listen to them. Let the children be around you and report. Touch each wife. Put the Spirit of God around them. Let them feel it in you. If it is in you it cannot help but come out of you in the fruits of kindness and love. Make sure you solve the problems. Don't go to bed at night unless every family member is touched with that Spirit in you. Teach them to seek unto you with a prayer in their hearts, that their heart will be open to receive the teaching and counsel. And if someone is ornery, and didn't do their duty, there is the perfect opportunity to show them that keeping sweet is more powerful than all the complaining. Endure their weakness. Endure their attack. Say, "I still love you, but we need to do this better." Do not answer them in the same spirit. Rebuke with sharpness, but never with a raised voice, the power of your Priesthood being felt in the truth of your words, not the raising of your voice. Make sure the Holy Spirit is in your home before you retire.

The sure way to tell if this is happening with you is if your family loves to be around you. Your children will flock around you. Your wives love to be in your presence, not with just the light-mindedness, but because they feel life flow from you to them. And in your funning and having a sense of humor, you can turn

immediately to the words of the Prophet and the power of his words be felt in your spirit and example.

Why am I able to describe this, dear brethren? I have seen it. I have felt it in my father. I am seeing it every day in his home. Though his ladies may have weakness, I see the light in him shining into them and resulting in a love for one another. I testify to you, the Millennium is starting in the home of our Prophet. My prayer for you is that the light will shine from our Prophet into you through an unobstructed obedience. With all of your personal struggling to overcome your sins and weaknesses, if you do not do this labor with your family you will fail, even in your own preparation. Your personal preparation will be quickened through exerting the power of the Priesthood in the lives of your family, and Priesthood government is persuasion through love. It requires you to invite and lead and speak through kindness. Our Prophet said, "We wouldn't be part of this Priesthood if we didn't have a degree of the Spirit of God." His concern is do we have enough of it?

I now turn to the words of our Prophet as he gives details on how we know we have the Spirit of God. Whenever you hear the words: "intelligence", "truth", "light", and "the glory of God", all of those are the Spirit of God.

RTJ 1:201 January 7, 1962 CCA Conference

*We, brethren and sisters, *** in order for us to reflect God in our lives, we must get and keep this Spirit. We must become skillful in getting and keeping constantly the Spirit of God. This is a skill,*

You work at it.

...a matter of habit, shall we say. And just as sure as we are sitting here, as we go along and become more and more skillful, and it seems we will never be without it, the time will come when the Lord will withdraw that Spirit, as He did with Christ, and see if we can act on correct principle, by pure naked principle, as it has been made a part of us by having had and kept the Spirit of God with us at all times. But we are still agents unto ourselves, and this is why, my dear brothers and sisters, the Prophets have exhorted us from

*the very beginning. We can see that Christ did it in His day, when He spoke of how He and His Father were one, and called upon His Apostles to be one as They were one, and to have the Spirit of truth, that the Holy Ghost, if they would tarry in Jerusalem, would come upon them; which it did upon the day of Pentecost. ****

It is said of Heber C. Kimball that he was constantly able to act and walk by the Holy Ghost, which was a source of constant revelation to him day and night. The Holy Spirit is a Spirit of peace, of joy, and of love. It is the attributes of God. It is knowledge, faith, justice, judgment, mercy and truth; which, if we acquire in full measure, we will make us Gods who are unchangeable, who is not a respecter of persons, who is a God of truth and cannot lie, who is love. These attributes of God, spoken of in the Third Lecture, are of those things or conditions which we acquire through getting and keeping the Spirit of God, through obedience in keeping the commandments all the day long, year in and year out, till the end of our lives. And the ultimate goal, which all of us should be seeking, is that our calling and election is made sure, that we may stand in the presence of the Savior, and receive a fullness,

A fullness of the Spirit of God,

...which is Godhood, and by which we will become Kings, Priests, Queens, and Priestesses under the Most High God, heirs of God and joint heirs with Jesus Christ;

These are all words of our Prophet. The way you can tell you have the Spirit of God is a feeling of peace, joy, love. It isn't different from that ever. It is a smile within, even in the midst of challenges, and tribulation, and pain. And if even one of those attributes is missing, you do not have the Spirit of God. We must study the attributes and the character of God and compare ourselves to it.

RTJ 1:46 February 2, 1953 SLC

I want to call your attention tonight to the way we can attain those attributes in a simple way. The formula is simply this: We are told that the Holy Spirit is the attributes of God. What is the Holy Spirit? It is that glorious gift that was

offered or given to us after we received the ordinance of baptism by the laying on of hands. That is the great secret, brothers and sisters -- this Holy Spirit. Parley P. Pratt says, "The attributes of God is His Holy Spirit." This Holy Spirit is all around us. God is omnipresent

Or everywhere present.

...by reason of this substance called the Holy Spirit. So if we can get the Holy Spirit, brothers and sisters, we have the attributes of God. It is just that simple. Can you conceive of being taught all necessary knowledge unless you have the Holy Spirit? Can you have sufficient faith or power to go forward in fulfilling your covenants and obligations before God if you do not have the Holy Spirit?

Even your forgetting the commandments of God is because you lack the Spirit of God.

How could you help but be just and have perfect judgment and mercy, and gain a knowledge of all truth if you have the Holy Spirit?

We don't just slice up the Holy Spirit and gain a portion of it.

You do not just have justice and no mercy. You don't just have knowledge and no judgment. You have all of those powers called the attributes of God. They are the powers of that Spirit. They are felt.

It may be said that we have it in varying degrees, but if we have the Holy Spirit, brothers and sisters, we will step by step gradually attain those attributes of God which have been enumerated.

The scriptures speak of attaining a fullness of this Spirit, that we may become like God.

So don't be satisfied that you have had the Holy Spirit. You must grow; for if you are not drawing towards God, increasing and growing, you are dying, decreasing, going down. There has to be a continual growth through the actions of these attributes in you.

Cultivate the Holy Spirit that it will be our constant companion. Having made covenants -- and I am talking to people who have made covenants; and among those covenants are that we

will work in harmony and draw near to God through His servants --

Here are the necessary works to be filled with the Holy Spirit:

...we will first, then, submit ourselves to our file leaders; and then, through the power of prayer, submit ourselves to God.

It is not enough to just come and report in. You submit yourself to God daily, hourly.

...and in turn, that Spirit will be our companion and guide. The person who has it the most often, in the longest periods of time, and in the greatest degrees, will have the attributes of God. Isn't that a beautiful thing? I am afraid we don't think of it in that light often enough. How do we know when we have the Holy Spirit? We can tell when we have it if we have these attributes.

So I ask you, brethren, have you even memorized what the attributes are? Knowledge, faith or power, justice, judgment, mercy or love, and truth. The greatest attribute, guiding all of the others, is love, or charity. Compare yourself to the details given in the scriptures what charity is, and this Holy Spirit. Always judge yourself first if these attributes are in you before you can judge those under your jurisdiction. Make sure you have the sweet Spirit before you can judge and bless others.

Lay hold of this precious gift, this secret of life.

This Holy Spirit.

It is the very thing that holds the earth together, the power by which the Priesthood operates, by which God operates, for God is Priesthood.

How can you hope to obtain it unless you are near to your Priesthood head here on the earth? If you sisters cannot draw near to your husbands, they cannot draw near to you; assuming, of course, that they are true and faithful. We must submit ourselves to obtain the confidence of our file leaders and of God. Seek continually to prevail with the Lord to give you the Spirit of God. Let us do nothing in our daily lives to grieve it. It will be our constant guide and companion. We should govern all things by it and through it --

our family, our wives and our children, men. This speaks on how we should do it:

D. & C. 121

41. No power or influence can or ought to be maintained by virtue of the priesthood, only by persuasion,

All of these are persuasion through love. We persuade first,

41. ...by long-suffering,

Not impatient, striking out, getting after at the first instant. You take it, make sure the smile inside burns within you, a love for that person, a prayer that you will speak in kindness. You persuade:

41. ...by gentleness and meekness, and by love unfeigned;

Unpretended. You persuade:

42. By kindness, and pure knowledge,

You don't just listen to the accuser. You sweetly and kindly listen to the accused, because often the accuser has the wrong spirit. You gain pure knowledge,

42. ...which shall greatly enlarge the soul without hypocrisy, and without guile --

Or deceit. And if all of this first-effort of kindness does not work, ask the Lord what to say and do, and by the Holy Ghost and these attributes -- proper judgment, proper mercy and love, having the knowledge and truth, you exercise the justice to bring them to obedience and love. You persuade by:

43. Reproving betimes

Not all of the time.

43. ...with sharpness, when moved upon by the Holy Ghost;

And how do you know it was by the Holy Ghost?

43. ...and then showing forth afterwards an increase of love toward him whom thou hast reproved, lest he esteem thee to be his enemy;

44. That he may know that thy faithfulness is stronger than the cords of death.

In working with many young men, young men who have had troubles, very often in their

thinking they justified their rebellion to their fathers through the harshness of their fathers. Many times I have heard young men say, "Well, I just felt like my father didn't love me," justifying his own rebellion in that. And thus if we drive our children with harshness, only showing the kindness if they obey, we could turn them away from us into rebellion and evil. The building of your children and drawing them around you starts before they are three years old. It starts by you putting upon your wives the Holy Spirit while they are carrying that child; conducting yourself in a pure manner, morally clean; letting your motive of marriage relations be to bring forth children in purity, not to gratify passion and immorality, but to teach your wives purity, to be filled with the Holy Spirit. I have heard our Prophet say, "A man should only have those marital relations with a wife if she invites it; and the purpose for her to invite it is to have children. And if they are with child, leave them alone sexually." The proper hugging, a kiss, proper touching and drawing close, that is proper as the Spirit of God is with you. But there is no force in the marriage of Celestial Marriage; all with an eye single to the glory of God. And your wives, seeing you conduct yourself in this pure manner, will have greater confidence in you. Then the women won't come complaining to our Prophet of the abuses of their husband upon them in their marital relationships. Notice, in this being filled with the Spirit of God, we must be full of virtue and charity.

*45. Let thy bowels also be full of charity towards all men, *** and to the household of faith, and let virtue garnish thy thoughts unceasingly; then shall thy confidence wax strong in the presence of God; and the doctrine of the priesthood shall distil upon thy soul as the dews from heaven.*

46. The Holy Ghost shall be thy constant companion, and thy scepter an unchanging scepter of righteousness and truth; and thy dominion shall be an everlasting dominion, and with compulsory means it shall flow unto thee forever and ever.

Then we have a fullness of that Spirit. When we have a fullness, we have the same mind with

the Father and the Son, Jesus Christ, and become joint heirs with God and Jesus Christ.

And he says:

Read Lecture Five and Section 93.

One more quote from our Prophet.

RTJ 1:52 September 7, 1958 SLC

So this great need of the Holy Spirit. How many of us are conscientiously seeking to know how it works? Do we know when we have it? When we speak of ourselves and not by the power of the Spirit, that is the difference between our progress and salvation in this work. To be damned is to be stopped in our progress. To be saved and exalted is to go on and progress until we come into the presence of God. The good Holy Ghost will comfort us and guide us through this veil of tears, and by that means, perfect our lives and become the same character as the Holy Spirit. The Holy Spirit is the attributes of God with all the affections and love and characteristics of Godliness, because that is how God has become what He is. The means by which we become Gods is to obtain a fullness of that Spirit. It is up to us to cultivate it and learn its workings day by day. How are we going to get it? The very first step is prayer. The next step is obedience, implicit obedience to the laws and commandments as they were revealed to us. The gift of revelation is the greatest of all gifts, for without that we cannot know and do the will of God. As we learn the workings of this Spirit, we will attain unto its attributes of knowledge, faith, mercy, justice, judgment, and truth.

Can you imagine anyone having their beings filled with this Spirit who do not have the attributes of God?*** You are here on the Lord's ground or the devil's ground. Once we get on the devil's ground, it is mighty hard to get back on God's ground. The Spirit of God is the Spirit of peace.

When you hear the word "spirit", that means the "feeling".

...the Spirit

Or feeling,

...of peace, calmness, joy and love. The greatest of all the attributes of God is the attribute of love. He so loved the world, that He sent His Only Begotten Son to be the great Prototype to show us that we may live without sin as He did, with repentance and faith and receiving all the ordinances of the House of God and of the Priesthood.

Without this Holy Spirit we are of no use to our Prophet. With it we will be a power in his hands to prepare ourselves and our families to be used as one in the great redemption of Zion. "Be ye filled with the Holy Spirit," is our Prophet's prayer in our behalf. And you draw near to him through your honesty of submission and obedience to his teachings. Though you be a thousand miles away, you can still draw near to him. Tell the Lord you want to do His will through obeying the Prophet, and ask Him to guide you with His Spirit. When you go to work let that desire to build up the Prophet cause the same Spirit as he has burn in you. You watch. It will work and give you success.

Now brethren, if no one here would take offense, it would seem like no one was giving it. To have a thick skin is the shield of the Spirit of God within you. We must be as Christ is and was, where we can take whatever comes and return love. If you will just love the Prophet you will find you must love one another through this Holy Spirit exercised in you.

May the love and Spirit of God grow within us, I pray, and bless our Prophet through our works and the Lord answering our prayers in his behalf. I am a witness, a personal witness that the Spirit of God is increasing in our Prophet. His very words are life and power. May we grow in the same, I pray in the name of Jesus Christ, amen.

President Rulon Jeffs: I think he has said it all. He has been quoting me all through it. I think it would be well if you had a copy of the transcription of this teaching here today. We will get it done. God bless you, amen.

EXHIBIT C

Friday, February 20, 1998

*Specific Duties and Counsel to the Fathers; A Wife
Obeys Her Husband as He Obeys the Prophet*

President Warren S. Jeffs: I desire Heavenly Father's Spirit to be with me, explaining to you — or repeating, rather — the words of the Prophets. And today's discussion is in an area we have generally skipped over, as far as the teaching of the young ladies. But I have awakened to see that even the young ladies need to understand a little about the duties of the men; because if you understand what the position of a wife and mother is, she is a helpmate and a part of her husband, and she is to help him magnify the Priesthood he bears, and not stand in the way of his loyalty and obedience to the Prophet over him. If a woman seeks to come between her husband and the Prophet, demanding, "O dear husband, do what I want. Why don't you do this and that?" that man will eventually lose his Priesthood and you, if you were to do this type of thing. The greatest thing your husband can do is honor the Priesthood over him, and that is how he magnifies his Priesthood.

This training has been given to the young men through our Saturday Work Project Meetings in this area, and I trust that you read this with a prayerful heart.

When President Jeffs performs a sealing, very often, after the covenant and ordinance is performed, he shakes the hand of the man and says, "Take care of this good lady. Keep sweet no matter what." Then he takes hold of the young lady's hand and says, "You obey this good man in all things in righteousness." I have heard him talk about it afterwards. He would say, "I have had to add that phrase 'in righteousness', because some men have taught their wives, 'You have to obey me no matter what.' No, no, no. That isn't right. You obey your husband in all things in righteousness. And that is why you young ladies need to be taught correct principle, because if anything happened to the faithfulness of your husband, you don't have to go to hell with him. In fact, what you read here reveals to you a man can only hold a wife if he holds the Melchizedek Priesthood. And if he loses that Priesthood, he

really doesn't have a wife or family. He has lost them.

The Priesthood is eternal. It is the eternal power of God, and the Lord, in His love and mercy, bestows it upon faithful sons. But when a man receives the Priesthood, he can't go off and be his own daddy. He can't go off to some corner of the world and be separate from the Prophet and still keep his Priesthood and honor it. So young ladies, realize the first duty of a Melchizedek Priesthood bearer is obedience to his head.

It is not men against women in this Priesthood. It is a man with his wives, a oneness. The men have been taught this truth that Uncle Roy gave, and Brigham Young and others: "It takes a man and a woman to make a man." And then Uncle Roy says, "And it takes several women." For him to be a God, a true man of God, he must receive wives and raise them, train them, and bring forth children in righteousness.

We are here to learn how to become like God by doing what He does, enter into the holy Celestial Law and exalt those who come under our jurisdiction. The father has to have the proper thoughts in his mind, and you need it in your minds, ladies. A father on this earth, a Priesthood bearer, can only look upon his wives and children as a stewardship. They really belong to Heavenly Father. And he should do with his family as the Lord directs, not just make up his own rules and do anything. And this realization that all he has belongs to God and the Prophet, should awaken a father to the truth that he must be careful what he asks his wives to do, both in outward works and intimate relations. He must govern himself in his marriage connections to honor God and Priesthood.

This chapter tells the men their great work is to first become like God, and that takes place by drawing near to the Priesthood first. They are to love God and Priesthood, the Prophet, even more than their wives. I remember one man telling me right after he got married, his wife was crying,

"Oh, you love Uncle Roy more than me," she said, supposing some girls have such a romantic view of their future, that their husband is going to worship them and jump at their slightest wish.

If a woman rules over the man, the man loses the Priesthood. The men realize this. You need to realize it. And you should rejoice that your husband, his heart is first set on the will of the Prophet. Young ladies, you should be praying to Heavenly Father that you will be given to that kind of man, or else he won't be able to exalt you. Priesthood must come first in his life and yours.

So what is it a woman loves in a man, really? Some people think it is just the looks. The thing a woman should love in a man, really, is Priesthood, that godliness in him, and the godlike character he is acquiring through raising a family and obeying his head. You should be praying to Heavenly Father you will be given to a man who can lead you and teach you right. And you young ladies need a testimony just like your husband must have.

These teachings tell the fathers they are to be as a god over their family, but President Jeffs gives the proper understanding of that. A man is only a god over his family as far as he is like God. Just because he is the head does not mean he can do evil, that he can tell you to do evil. But you must have a testimony and understanding of the principles of the Gospel yourself to know that you are being led right.

The men are taught, "Be fathers and not masters." That means be loving instead of just commanding. And they, setting the example, you ladies should follow and do the same. A woman can be so carefully sweet with her husband, but as soon as he leaves the room or the house, she becomes the great commander, bossing here, bossing there. If it is required of the men, it is also required of the women to rule in love and peace.

Page 239 gives a beautiful lesson. You will read it in the chapter on mothers, also, where the Prophets talk to mothers.

In Light and Truth Page 239
Leroy S. Johnson Vol 4 Page 1350 March 6, 1977 CCA

First, do things yourself, and do them properly and tidy up your own home — your own life, and see how quick the ladies will follow in line with

you. They won't only love you, but they will do the things that you ask them to do. You will never have to ask them twice. They will want to do the things you ask them to do.

I grew up in the home of a Prophet, a man who was perfectly obedient to his Prophets — Uncle John and Uncle Roy over him — and I witnessed how President Jeffs raised a family. He first set himself in order. The power he had with his family was that he was doing what he was teaching, himself. And that is what you young ladies must do to be proper mothers. Your confidence and love for your husband will be that he lives what he teaches, as far as the principles of the Gospel are concerned. Well, for your children to want to follow you, they must see you do what you say, in correct principles.

In Light and Truth Page 240
Rulon Jeffs 1:119 May 8, 1960 SLC

... "Teach them correct principles" and let them govern themselves.

Is Priesthood government. Priesthood government is persuasion through love. And the order of love is to first be obedient yourself. Here is what Brigham Young says about being harsh:

JD 4:282 Brigham Young March 25, 1857 SLC

If I have not wisdom and power to gain the influence necessary for me to wield in the midst of this people, without cursing them, without telling them that they and their substance shall be cursed, and that if they do not do as I say they shall go to hell — without threatening the people all the time with my judgments and the judgments of the Almighty — I say, let Brigham

Talking to himself,

*...sink a little lower, and get into the field where I can find my true level, where I can be made more useful. ****

So if all you can do is govern by threatening and getting after, if that is the only way you can get the children to obey you, you need to be more humble and go set yourself in order first; because generally, the little children are doing what you have been doing or saying. They have become like you, and the spirit the child displays is just a mirror reflection of you. I say that is generally the case.

Let your influence and your power be gained by the power of the Lord Almighty, by the Holy Ghost sent down from heaven, and see that you have within you a well of water, springing up to everlasting life.

Make sure you are filled with the Spirit of God. Now this is what the fathers are taught, and then they are to use this same influence in training their wives, and your husbands will call upon you to do as they do.

Some of you will get married to a very inexperienced man. President Barlow once said, "A woman can pretty well make or break a man if he is not careful." His inexperience could lead him to not know quite how to treat you, and perhaps he will give in to your wishes easily. And you could be tempted to use your womanly influence and emotions to get your way. President Jeffs calls men who are ruled by their wives, "weak sisters". He calls the men that.

So I suggest to you, whether you have an experienced or inexperienced husband, be humble. Go and ask him what you should do instead of telling him all you want to do. Desire to be taught and respond quickly, and your husband will learn how to be a better husband with you helping him. You are here to help him magnify his Priesthood by being one with him, not ruling over him with your emotions, your feelings that come at every whim.

So I voice this way you should always approach your husband, ladies, realizing he is to be or become God over you, if he hasn't learned how. Realize and look upon your husband as the representative of God to you, as the source of all good gifts and the Spirit of God. So always approach him humbly, with a prayer in your heart. If a woman doesn't approach her husband this way, if she goes forth with her feelings bubbling over, without a prayer, without humility, the opposite will be there and she will just want her way, to dictate. And oh, she can see it, because the husband isn't there all the time, and she can see the problem and she tells him what ought to happen. A woman like that becomes the problem instead of the problem she is naming. She is the problem. And if the man isn't careful and loyal to keeping sweet, he can quickly be ruled over by the emotion

of his wives and not keep sweet. The men are taught, "Even if your wives don't keep sweet, you must." This is the training they have been through recently. Now you know, you don't want to abuse that, but you want to support him so you can be at peace.

I believe the parents in this Priesthood work today are in the path of repentance and doing better. There are times in the past when the harshness of parents have made young people, young ladies, for instance, question whether they really wanted the Celestial Order of Marriage. But I am grateful we are living in a time when even the parents are in the path of repentance and doing better. But perhaps in your younger years you witnessed things, you heard things, you felt things that are a tradition with you now.

When you get married, be humble. The office and place of a wife is to be meek and humble toward her husband, but strong in the faith, strong for standing for the right. And if he makes a mistake, or you feel there is something not quite right in him, endure it, be sweet, support him in the good. That will be a more powerful influence with him than all the getting after, complaining, criticism you could bring forth toward him. And if you will do that, your children will be turned to the father. The way you turn your children away from the father is to complain against him.

I will have you turn now to page 249, read Uncle Roy's words at the bottom. This says it is the sermons of Uncle Roy. These are really the words of President Jeffs. I will go to the next paragraph, page 250.

In Light and Truth Page 250

Rulon Jeffs (LSJ Vol 7 Page 116) May 12, 1963 CCA

This is the family order of heaven we are seeking to live, and the social order of the law of Celestial Marriage. It is the economic order of heaven which is its companion law. The fundamental concept of both of these laws, brethren and sisters, is that the earth is the Lord's and the fullness thereof. We are the Lord's — brethren bearing the holy priesthood cannot look in any other way upon their wives and children other than as stewardships, and they are stewards over them. They cannot look upon anything they

are using or have the possession of except that it be the Lord's.

So a man, realizing his wife or wives and children really belong to the Lord, he is taught that he should treat them as the Lord would have them treated. To govern, he knows he must be governed. To lead, he knows he must follow. So why not help him and encourage him to follow his head? If a wife says to me, "Well, why don't you do what I need instead of what the Prophet wants you to do?" all I can say to her is, "You lose. The Prophet is my life." And the ladies pretty quick learn that lesson. And if a woman is bothered by that, she isn't converted yet. She doesn't see what the Celestial Law and Priesthood is all about.

So there is this order of loyalty -- first to Priesthood, and then, because a man loves the Prophet, he is able to love his wives. The love of God comes from above. We love those over us most, and we are only able to love those under our jurisdiction properly because we love those over us most.

Now you can take this same example into the family. A wife, her first loyalty is to her husband for her to be able to love her children. If the children rule over the mother and the mother fears lest she displease her children, and she doesn't really care what the husband thinks, but only what the children think, then the children rule the home. She must have her first love, loyalty and obedience to her head, so when her children do wrong, she won't join with them or protect them in it.

Now you will read in this chapter that the Lord wants the husbands and wives to be in harmony. And there is a particular quote I want you to read on page 254 through 257 for your next study, so you can see the order of love. I would like you to read page 250 through the top of page 262, training to the fathers in connection with their wives that I am anxious for you to be aware of.

So often in the Celestial Law, when a person is ruled by their feelings and emotions, they judge their Priesthood head after their own heart. A wife judges her husband after her heart. And if she has

jealousy, feelings and complaining, she judges that her husband is acting the same way and thinking the same way. You can only see clearly if the Spirit of God is in you, and that Spirit comes to you through Priesthood, through your humble obedience to the Priesthood over you in living correct principles.

Before I let go of this lesson today, I want to make sure and emphasize the order of obedience: The woman is to obey the husband as the husband obeys the Prophet. And if a man is determined to go down to hell, a woman does not have to go with him. And you young ladies should rejoice when you are married, that you are married to a man whose first loyalty is to the Prophet and correct principle, and not ruled by the emotions of family or others.

Among the apostates who have recently left this Priesthood, the men declare, "No man can take my Priesthood from me." And then they say to their wives, "You have made an eternal promise with me so you can never leave me." And I am telling you, that is a lie. Our Prophet has corrected that, right after he performs an ordinance, that the woman is to obey the husband only in righteous principles, not in the wrong.

So you must have a testimony of the Prophet and correct principles. You must be in oneness with a man who lives those correct principles for you to receive an exaltation. And through that oneness and you becoming pure element, filled with the Holy Ghost, you will be a family worthy of the Celestial Kingdom, and that is what this is all about. All you have been through so far in life is just a preparation for this greatest step of entering into the Celestial Order of Marriage and then abiding it.

So do well, young ladies and learn these lessons. And learn these duties of the husband so you can see where he is coming from when he makes requirements of you or doesn't respond as you wish he would. Listen carefully, or read carefully these words and lessons.